

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

GABRIEL JONES,)	
)	No. CV-05-196-CI
Plaintiff,)	
)	REPORT AND RECOMMENDATION TO
v.)	DISMISS COMPLAINT AND CLAIMS
)	WITH PREJUDICE FOR FAILURE
RICK RUNGE and SCOTT JOHNSON,)	TO PROSECUTE
BENTON COUNTY DEPUTY)	
PROSECUTOR,)	
)	
Defendants.)	

On March 23, 2006, the court ordered Plaintiff to show cause why the Complaint and claims in the captioned matter should not be dismissed for failure to prosecute. (Ct. Rec. 42.) Plaintiff is proceeding pro se; Chief Civil Deputy Prosecuting Attorney Ryan K. Brown represents Defendant Johnson; Kennewick City Attorney John S. Ziobro represents Defendant Runge. The parties have not consented to proceed before a magistrate judge.

On February 16, 2006, Plaintiff was directed to show cause why claims against Defendant Johnson should not be dismissed. Plaintiff did not respond. Plaintiff also has not responded to the court's March 23, 2006, Order to Show Cause why claims should not be dismissed for failure to prosecute. (Ct. Rec. 38.)

REPORT AND RECOMMENDATION TO DISMISS COMPLAINT AND CLAIMS WITH
PREJUDICE FOR FAILURE TO PROSECUTE - 1

1 FED. R. CIV. P. 41(b) provides the district court may dismiss an
2 action for failure to comply with any order of the court. In
3 determining whether to dismiss a complaint for failure to comply
4 with a court order, the district court must weigh five factors
5 including: (1) the public's interest in expeditious resolution of
6 litigation; (2) the court's need to manage its docket; (3) the risk
7 of prejudice to Defendants; (4) the public policy favoring
8 disposition of cases on the merits; and (5) the availability of less
9 drastic alternatives. *Ferdik v. Bonzelet*, 963 F.2d 1258 (9th Cir.
10 1992). All factors but the fourth support dismissal. Accordingly,
11 **IT IS RECOMMENDED**, the Complaint and claims be **DISMISSED WITH**
12 **PREJUDICE**.

13 OBJECTIONS

14 Any party may object to a magistrate judge's proposed findings,
15 recommendations or report within ten (10) days following service
16 with a copy thereof. Such party shall file written objections with
17 the Clerk of the Court and serve objections on all parties,
18 specifically identifying any the portions to which objection is
19 being made, and the basis therefor. Any response to the objection
20 shall be filed within ten (10) days after receipt of the objection.
21 Attention is directed to FED. R. CIV. P. 6(e), which adds another
22 three (3) days from the date of mailing if service is by mail.

23 A district judge will make a de novo determination of those
24 portions to which objection is made and may accept, reject, or
25 modify the magistrate judge's determination. The judge need not
26 conduct a new hearing or hear arguments and may consider the
27 magistrate judge's record and make an independent determination
28 thereon. The judge may, but is not required to, accept or consider

1 additional evidence, or may recommit the matter to the magistrate
2 judge with instructions. *United States v. Howell*, 231 F.3d 615, 621
3 (9th Cir. 2000); 28 U.S.C. § 636(b)(1)(B) and (C), FED. R. CIV. P. 73;
4 LMR 4, Local Rules for the Eastern District of Washington.

5 A magistrate judge's recommendation cannot be appealed to a
6 court of appeals; only the district judge's order or judgment can be
7 appealed.

8 The District Court Executive is directed to file this Report
9 and Recommendation and provide copies to Plaintiff at his last known
10 address, counsel for Defendants and the referring district judge.

11 DATED April 20, 2006.

12
13 S/ CYNTHIA IMBROGNO
14 UNITED STATES MAGISTRATE JUDGE
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